

LAW AND PUBLIC SAFETY

DIVISION ON CIVIL RIGHTS

Rules Pertaining to the Fair Chance in Housing Act

Proposed New Rules: N.J.A.C. 13:5

Authorized By: Rosemary DiSavino, Deputy Director, Division on Civil Rights

Authority: P.L. 2021, c.110, Sec. 13

Calendar Reference: See summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-

Submit comments by November 6, 2021 to:

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The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (“the Division”), in the Department of Law and Public Safety, enforces the Fair Chance in Housing Act (“the Act”), P.L. 2021 c.110. As required by the Act, the Division proposes to adopt new rules N.J.A.C. 13:5, Rules Pertaining to the Fair Chance in Housing Act, to implement the Act’s provisions. If additional regulations are required

to implement the Act's provisions, the Division will propose additional rules once the Act has gone into effect.

On June 18, 2021, the Governor signed the Act into law. The Act establishes requirements for housing providers who seek to consider an applicant's criminal record as part of the application process. The Act provides that a housing provider may not require an applicant to complete any housing application that includes any inquiries regarding an applicant's criminal record prior to the provision of a conditional offer, with limited exceptions, and may not make an inquiry regarding an applicant's criminal record prior to a making a conditional offer. Even then, the Act sets forth restrictions on when a housing provider may rely on an applicant's criminal history to deny housing based on the nature and age of the criminal offense, among other factors. Prior to the Act's passage, housing providers were not prohibited from inquiring about applicants' criminal histories on initial application materials and discriminating on that basis, even if the record included only a minor infraction unrelated to the applicant's eligibility as a future tenant.

The Division is proposing the following rules to effectuate the Act. In light of the Act's effective date, the Division has prioritized proposing rules that provide instructions on how to comply with the Act and outline the procedures for filing and resolving complaints. The Division recognizes that further rulemaking may be warranted to address certain questions left unresolved in the Act itself as they arise after the Act goes into effect, and because of the need to give further consideration to such questions.

Subchapter 1 summarizes the Fair Chance in Housing Act. It restates and clarifies general provisions from the Act, including its scope and key definitions, and identifies circumstances in which housing providers are prohibited by the Act from inquiring about applicants' criminal

histories before a conditional offer of housing has been made, with some limited exceptions. It also sets forth the processes for application fees, and the manner by which housing providers can take certain specific criminal records into account following a conditional offer. It prohibits discrimination, drug testing, and any advertising that restricts applicants with criminal histories, with some limited exceptions. It also clarifies housing providers' immunity from civil liability under the Act.

Subchapter 2 establishes enforcement mechanisms under the Act. It delineates the processes for the complaint, notice to respondents and opportunity to cure or resolve the complaint, investigations, and appeals. It sets forth the penalties and remedies from the Act, and clarifies which documents pertaining to complaints under the Act are public records.

The following is a summary of the proposed rules:

Proposed new N.J.A.C 13:5 Subchapter 1, General Provisions, sets forth the general provisions of the proposed new rules including the purpose and scope of the chapter, definitions, violations, exceptions, notice, immunity from civil liability, and prohibition against retaliation.

N.J.A.C. 13:5-1.1 sets forth the purpose of the chapter.

N.J.A.C. 13:5-1.2 sets forth the general requirement, as remedial legislation, that the statutory provisions be broadly construed, and that provisions of the rules are severable.

N.J.A.C. 13:5-1.3 sets forth the definitions that are used in the rules. The Division proposes defining all terms as they are defined in the Act to ensure consistency between those existing statutory definitions and the proposed new rules. In addition, there are several undefined terms in the Act the Division proposes defining in the rules in order to provide guidance to covered entities and facilitate enforcement of the Act. The defined terms are as follows:

applicant, complainant, conditional offer, criminal record, director, division, electronically, housing provider, position statement, rental dwelling unit, and respondent.

N.J.A.C. 13:5-1.4 sets forth the limitations on housing providers' ability to inquire into applicants' criminal records during the initial application stage under the Act, with certain exceptions as specified in the Act.

N.J.A.C. 13:5-1.5 sets forth guidelines for housing providers' application fee processes under the Act.

N.J.A.C. 13:5-1.6 requires housing providers to apply the standards of the Act in a non-discriminatory manner.

N.J.A.C. 13:5-1.7 sets forth the specific types of criminal records that a housing provider may not consider when evaluating applicants for tenancy, either before or after a conditional offer, under the Act.

N.J.A.C. 13:5-1.8 sets forth the specific types of criminal records that a housing provider may consider when evaluating applicants for tenancy only after the issuance of a conditional offer. It specifies that even where a particular type of criminal history can be considered, an applicant may only be rejected based on their criminal history if such a rejection is necessary to serve a substantial, legitimate, and nondiscriminatory interest of the housing provider. If the housing provider relies on a criminal history inquiry conducted by a vendor or other outside person, the housing provider must take reasonable steps to ensure that the vendor or other outside person conducts the criminal history inquiry consistent with the Act and rules.

N.J.A.C. 13:5-1.9 sets forth guidelines for housing providers when they withdraw a conditional offer on the basis of applicants' criminal records, and requires them to provide written notice of such a withdrawal pursuant to the Act. This provision also sets forth processes

and timeframes for applicants to demonstrate inaccuracies in their records or to submit evidence of rehabilitation, and housing providers' determinations after consideration of that information.

N.J.A.C. 13:5-1.10 sets forth the process whereby applicants can request information regarding the reasoning behind a withdrawal of a conditional offer under the Act.

N.J.A.C. 13:5-1.11 sets forth restrictions on advertising under the Act, prohibiting any materials that discourage or exclude those with criminal records from applying.

N.J.A.C. 13:5-1.12 prohibits the dissemination of applicants' criminal records in accordance with the restrictions under the Act.

N.J.A.C. 13:5-1.13 discusses immunity from civil liability for housing providers who allow individuals with criminal records to live on their property under the Act, and clarifies that any such immunity does not extend to housing providers' failure to take reasonable action or refusal to take reasonable action in connection with actual unlawful, discriminatory, or harassing conduct by a tenant during the tenancy.

N.J.A.C. 13:5-1.14 prohibits housing providers from submitting applicants to drug or alcohol testing, or requesting applicants' consent to obtain information from a treatment facility under the Act.

N.J.A.C. 13:5-1.15 prohibits retaliatory actions by housing providers when applicants allege violations of the Act.

Proposed new N.J.A.C 13:5 Subchapter 2, Enforcement Provisions, sets forth the enforcement provisions of the proposed new rules including the complaint process; notice to respondents and opportunity to cure or resolve the complaint or answer; investigations and findings; appeals by respondents; penalties; remedies; and confidentiality of the Division's investigatory files.

N.J.A.C. 13:5-2.1 sets forth the process for an applicant to file a complaint against a housing provider alleging a violation of the Act, including the requirement that the Division notify applicants of potential New Jersey Law Against Discrimination (“LAD”) violations, and the Division’s data collection requirements under the Act. It also adopts the 180-day statute of limitations period consistent with the Division’s enforcement of the LAD and New Jersey Family Leave Act (“NJFLA”).

N.J.A.C. 13:5-2.2 clarifies the Division’s processes for service of complaints; mediation, including opportunities to cure alleged violations; and filing answers to complaints under the Act.

N.J.A.C. 13:5-2.3 sets forth the investigative process following un-remediated complaints under the Act, delineating the notice of violation process following substantiated complaints.

N.J.A.C. 13:5-2.4 sets forth the guidelines for a respondent to appeal a notice of violation.

N.J.A.C. 13:5-2.5 sets forth penalties for which a housing provider may be liable when violations are found under the Act.

N.J.A.C. 13:5-2.6 sets forth remedies the Division may require when violations are found under the Act.

N.J.A.C. 13:5-2.7 sets forth the confidential nature of the investigatory files and establishes their exemption from public access.

The Division has provided a 60-day comment period on this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)(5).

Social Impact

The legislature has determined that there will be a positive social impact on formerly incarcerated individuals and the State of New Jersey as a whole from the Fair Chance in Housing Act. Research shows that when formerly incarcerated individuals are unable to secure stable housing, recidivism often follows, negatively impacting public safety in our communities. Further, data shows that Black and Brown people are incarcerated at disproportionate rates in New Jersey. Until this Act was signed into law, housing providers were legally able to reject applicants with any criminal history, including minor violations. Because of racial disparities in the criminal justice system, this had a racially disparate impact and was often not necessary to achieve any substantial, legitimate, and nondiscriminatory interest of the housing provider. These new rules will have a positive social impact by providing guidance to housing providers and applicants in compliance with the terms of the Act, thereby improving access to stable housing, reducing recidivism, and reducing racial disparities and discrimination in access to housing.

Economic Impact

The Division does not anticipate that the proposed new rules will have a significant economic impact. The proposed new rules present no new legal obligations beyond those delineated in the Fair Chance in Housing Act. To the extent that a housing provider is currently using application materials that do not comply with the Act, a housing provider may incur costs in revising its application materials. However, that is a requirement under the Act, which is reiterated by the proposed rules. Further, neither the Act nor the rules adopts a new requirement for a housing provider to conduct a criminal history inquiry, but rather provides guidelines regarding how those criminal history inquiries must be conducted in the event that a housing provider chooses to conduct them.

Further, while the Act provides for the assessment of a financial penalty against a housing provider in certain circumstances, the new rules may assist the regulated entities in complying with existing legal obligations by clarifying their rights and obligations, thus reducing the need to retain professional services to assist in complying with the Act.

Federal Standards Statement

The proposed new rules are intended to clarify and interpret the Act, and are not intended to implement or comply with any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. The Federal U.S. Department of Housing and Urban Development (HUD) issued a guidance document in 2016 stating that blanket criminal history-related bans likely violate the Federal Fair Housing Act (FHA) because of their racially disparate impact and because they are unnecessary to serve a substantial, legitimate, and nondiscriminatory interest. The Fair Chance in Housing Act, however, dictates clear rules and guidelines about criminal record inquiries that are either prohibited or permissible, before or after a conditional offer. To the extent that the proposed new rules provide rights or obligations that exceed similar guidance in Federal law, the Act mandates such provisions.

Jobs Impact

The Division does not anticipate that the proposed new rules will have any impact on the number of jobs in this State.

Agriculture Industry Impact

The Division does not anticipate that the proposed new rules will have any impact on the agriculture industry of this State.

Regulatory Flexibility Statement

The Division does not anticipate that the proposed new rules will impose any reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq, beyond those set forth in the Act. The Act applies to housing providers, including landlords, owners, lessors, sublessors, assignees, their agents, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental dwelling unit. Therefore, some covered housing providers may be small businesses as that term is defined in the Regulatory Flexibility Act. However, because any compliance requirements in the proposed new rules are imposed by the Act itself, the rules cannot establish different compliance requirements for small businesses. These proposed new rules do not impose any reporting, recordkeeping, or other compliance requirements beyond those imposed by existing State and Federal law.

Housing Affordability Impact Analysis

The Division does not anticipate that the proposed new rules will have any impact on affordable housing in New Jersey or would change the average costs associated with housing, because the new rules recite and clarify housing providers' ability to consider applicants' criminal records pursuant to the Act.

Smart Growth Development Impact Analysis

The Division does not anticipate that the proposed new rules will have any impact on smart growth, or would change housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed new rules recite and clarify housing providers' ability to consider applicants' criminal records pursuant to the Act.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division anticipates that the Act will have a positive impact on racial and ethnic community criminal justice and public safety by affording individuals with criminal histories a fair opportunity to obtain housing, especially where the nature and age of the offense makes it irrelevant to their tenancy. By effectuating the Act, the proposed new rules will support the Act's positive impact. The Division anticipates that to the extent the proposed new rules will have any impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State, these rules will support individuals on probation or parole by removing a barrier to their ability to obtain housing, especially where the nature of the offense is not anticipated to impact their tenancy.

Full text of the proposal follows: SUBCHAPTER 1. GENERAL PROVISIONS

13:5-1.1 Purpose

This chapter is designed to implement the provisions of the Fair Chance in Housing Act, P.L.2021, c.110 ("the Act"), which concerns the housing rights of certain persons with criminal records.

13:5-1.2 Construction

- (a) Consistent with the public policy underlying the Act and with firmly established principles for the interpretation of such remedial legislation, the remedial provisions of the statute will be given a broad construction and its exceptions construed narrowly.
- (b) The provisions of these regulations are severable. If any provision or the application of any provisions of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

13:5-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Applicant” means any person considered for, or who requests to be considered for, tenancy within a rental dwelling unit.

“Complainant” means any person filing a complaint alleging a violation of the Act.

“Conditional offer” means an offer to rent or lease a rental dwelling unit to an applicant that is contingent on a subsequent inquiry into the applicant’s criminal record, or any other eligibility criteria that the housing provider may lawfully utilize.

“Criminal record” means information about an individual collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests, detentions, indictments, criminal complaints, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, release or conviction, including, but not limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of conditional discharge.

“Director” means the Director of the Division on Civil Rights.

“Division” means the Division on Civil Rights in the Department of Law and Public Safety.

“Electronically” means through the New Jersey Bias Investigation Access System (NJBIAS), which is currently available at <https://bias.njcivilrights.gov>, or through another electronic means specified by the Director.

“Housing provider” means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental dwelling unit.

“Position statement” means a legal brief or other writing that, in narrative fashion, responds to the allegations in a complaint, as well as explains the respondent's version of the facts and identifies specific documents and witnesses supporting the respondent's position.

“Rental dwelling unit” means a dwelling unit offered for rent by a housing provider for residential purposes, other than a dwelling unit in an owner-occupied premises of not more than four dwelling units.

“Respondent” means any party charged in a complaint with a violation of the Act.

13:5-1.4 Initial application inquiries

- (a) A housing provider shall not require an applicant to complete any housing application that includes any inquiries regarding an applicant's criminal record prior to a conditional offer of housing, except for a limited inquiry of whether an applicant has ever been convicted of criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing, and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.
- (b) A housing provider shall not make any oral or written inquiry regarding an applicant's criminal record prior to making a conditional offer.
- (c) An applicant may provide evidence to the housing provider demonstrating inaccuracies within the applicant's criminal record, evidence of rehabilitation, or other mitigating factors.

13:5-1.5 Application fees

(a) Prior to accepting any application fee, a housing provider shall disclose in writing to the applicant:

1. Whether the eligibility criteria of the housing provider include the review and consideration of criminal history; and
2. A statement that the applicant may provide evidence demonstrating inaccuracies within the applicant's criminal record or evidence of rehabilitation or other mitigating factors.

(b) A housing provider that provides the applicant with a written disclosure that is consistent with the Model Disclosure form made available by the Division on its website at the time the disclosure is provided will be deemed to have satisfied the requirements of this section.

13:5-1.6 Prohibition on discrimination

A housing provider shall apply the standards established by the Act to each applicant in a nondiscriminatory manner.

13:5- 1.7 Criminal records prohibited from consideration irrespective of conditional offer

A housing provider shall not at any point, either before or after a conditional offer of tenancy, evaluate an applicant based on any of the following types of criminal records:

- (1) arrests or charges that have not resulted in a criminal conviction
- (2) expunged convictions
- (3) convictions erased through executive pardon
- (4) vacated and otherwise legally nullified convictions
- (5) juvenile adjudications of delinquency, and

(6) records that have been sealed.

13:5-1.8 Criminal records that can be considered only after a conditional offer

(a) Before the issuance of a conditional offer to an applicant, a housing provider may not consider any criminal record in the applicant's history except for a conviction for the manufacture or production of methamphetamine on the premises of federally assisted housing and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.

(b) After the issuance of a conditional offer to an applicant, a housing provider may only consider a criminal record in the applicant's history that:

(1) resulted in a conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault in violation of N.J.S.2C:14-2, causing or permitting a child to engage in a prohibited sexual act or in the simulation of such an act in violation of paragraph (3) of subsection b. of N.J.S.2C:24-4, or any crime that resulted in lifetime registration in a state sex offender registry, or their equivalents under federal law or the laws of another state;

(2) is for an indictable offense of the first degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within the six years immediately preceding the issuance of the conditional offer, or their equivalents under federal law or the laws of another state;

(3) is for an indictable offense of the second or third degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within the four years immediately preceding the issuance of the conditional offer, or their equivalents under federal law or the laws of another state; or

(4) is for an indictable offense of the fourth degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within one year immediately preceding the issuance of the conditional offer, or their equivalents under federal law or the laws of another state.

(c) If a housing provider utilizes any vendor or outside person or entity to conduct a criminal record check, the housing provider shall take reasonable steps to ensure that the vendor or outside person or entity is conducting the criminal record check consistent with the Act and these rules. A housing provider will be liable under the Act for relying on a criminal history inquiry conducted by a vendor or outside person or entity that is conducted in violation of the Act or these rules if the housing provider failed to take reasonable steps to ensure compliance with the Act or these rules.

13:5-1.9 Withdrawal of conditional offer

- (a) A housing provider may withdraw a conditional offer based on an applicant's criminal record only if the criminal record check is conducted consistent with the requirements of N.J.A.C. 13:5-1.8, and only if the housing provider determines, by preponderance of the evidence, that the withdrawal is necessary to fulfill a substantial, legitimate, and nondiscriminatory interest.
- (b) The determination of whether an interest is substantial, legitimate, and nondiscriminatory requires a case-specific, fact-based inquiry, where “substantial interest” means a core interest of the entity that has a direct relationship to the function of that entity, “legitimate” means that a justification is genuine and not false or pretextual, and “nondiscriminatory” means that the justification for a challenged practice or policy does not itself discriminate or perpetuate historical discrimination based on a protected class.

- (c) Should the applicant have a criminal record of an offense that may be taken into consideration, the housing provider shall perform an individualized assessment of the application in light of the following factors:
- (1) the nature and severity of the criminal offense;
 - (2) the age of the applicant at the time of the occurrence of the criminal offense;
 - (3) the time which has elapsed since the occurrence of the criminal offense
 - (4) any information produced by the applicant, or produced on the applicant's behalf, in regard to the applicant's rehabilitation and good conduct since the occurrence of the criminal offense;
 - (5) the degree to which the criminal offense, if it reoccurred, would negatively impact the safety of the housing provider's other tenants or property; and
 - (6) whether the criminal offense occurred on or was connected to property that was rented or leased by the applicant.
- (d) A housing provider must establish by a preponderance of the evidence that the withdrawal is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.
- (e) If a housing provider withdraws a conditional offer, the housing provider shall provide the applicant with written notification that includes, with specificity, the reason or reasons for the withdrawal and an opportunity to appeal the denial by providing evidence to the housing provider demonstrating inaccuracies within the applicant's criminal record, evidence of rehabilitation, or other mitigating factors. A housing provider that provides the applicant with a written notice that contains the information in the Model Notice of Withdrawal of Conditional Offer form made available by the Division on its website at the time the notice is provided will be deemed to have satisfied the requirements of this subsection, provided that

such information includes with specificity, the reason or reasons for the withdrawal of the applicant's conditional offer.

- (f) If an applicant provides a housing provider with evidence demonstrating inaccuracies within the applicant's criminal record or evidence of rehabilitation or other mitigating factors, the housing provider shall review the information and reconsider the decision based on the evidence provided. A determination after reconsideration should be provided to the applicant within 30 days.
- (g) A landlord who relies on an inaccurate criminal record check will be liable under the Act if the applicant provides evidence that the criminal record check is inaccurate and the housing provider fails to take additional action to confirm the accuracy of the information relied upon.

13:5-1.10 Provision of information concerning withdrawal

- (a) The applicant may request, within 30 days after the housing provider's notice of the withdrawal, a copy of all information that the housing provider relied upon in considering the applicant, including criminal records.
- (b) A housing provider shall provide the information requested free of charge, within 10 days of receipt of the request.

13:5-1.11 Advertisements

- (a) A housing provider shall not print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or use any form of application for the rental, lease, or

sublease of any real property or part or portion thereof or make any record or inquiry in connection with the prospective rental, lease, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any unlawful limitation, specification or discrimination as to criminal record.

- (b) A housing provider shall not advertise that they will not consider any applicant who has been arrested, charged with, or convicted of a crime or offense, nor shall a housing provider make any statement in connection with a housing opportunity that they will not consider any applicant who has been arrested, charged with, or convicted of a criminal offense.
- (c) A housing provider shall not use any word, term, phrase, or expression that tends to influence, dissuade, discourage, or repel any person or persons from seeking housing because of a prior criminal history.
- (d) The provision of this section shall not preclude a housing provider from making limited inquiries concerning drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing, or whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program, or engaging in any advertising or making any statement that it will not consider an applicant who has engaged in drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing, or an applicant who is subject to a lifetime registration requirement under a State sex offender registration program.

13:5-1.12 Prohibition on dissemination of criminal record

Unless otherwise required by law, a housing provider shall not:

1. distribute or disseminate an applicant's criminal record to any person who is not expected to use the criminal record for the purpose of evaluating the applicant in a manner consistent with this act; or
2. use an applicant's criminal record for a purpose that is not consistent with this act.

13:5-1.13 Immunity from civil liability

- (a) To encourage residential landlords to provide housing opportunities to formerly incarcerated individuals, landlords subject to the provisions of this Act shall be immune from liability in any civil action arising as a result of the landlord's decision to rent to individuals with a criminal record or who were otherwise convicted of a criminal offense, or as a result of a landlord's decision to not engage in a criminal background screening.
- (b) Nothing in subsection a. of this section shall be construed to affect in any way the immunity from liability conferred by law upon a landlord who rents an apartment to a person with a conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault in violation of N.J.S.2C:14-2, causing or permitting a child to engage in a prohibited sexual act or in the simulation of such an act in violation of paragraph (3) of subsection b. of N.J.S.2C:24-4, or any crime that resulted in lifetime registration in a state sex offender registry.
- (c) Nothing in this section shall be construed to grant immunity to a housing provider for failure to take reasonable action or refusal to take reasonable action in connection with actual conduct by a tenant during the tenancy, or to excuse a housing provider from stopping, preventing or remedying a hostile housing environment created by a tenant's actual conduct during the tenancy.

13:5-1.14 Prohibition on drug testing

(a) A housing provider shall not require an applicant to submit to a drug or alcohol test, or request the applicant's consent to obtain information from a drug abuse treatment facility.

13:5-1.15 Retaliation

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Act.

(b) If the Division determines that a housing provider has engaged in one or more unlawful actions against a person with the intent of retaliating for the person's filing of an action against the housing provider under the Act, then each unlawful retaliatory action shall be enforced as a separate and distinct violation of this Act.

SUBCHAPTER 2. Enforcement Provisions

13:5-2.1 Complaints

(a) Any applicant or prospective applicant who believes that a housing provider has violated a provision of the Act may file a complaint with the Division by submitting a signed complaint to the Division electronically, by regular mail, or in person at any office of the Division. Any complaint that is submitted electronically may be signed electronically as well.

(b) Any complaint filed by an applicant or prospective applicant shall be filed with the Division within 180 days of the date of the alleged violation. The filing of a complaint or any other pleading shall be proven by the time it was submitted electronically, or, for filings submitted by regular mail or in person, the official stamp of the Division or by the signature of any official, employee, or investigator and their written notation indicating the date of receipt.

(c) A complaint shall be filed in a format approved by the Director. The complaint shall set forth in separate numbered paragraphs the following:

1. The full name of all complainants;
2. The full name and address of all respondents, if known; and
3. A brief statement setting forth the facts deemed to constitute the alleged violation.

(d) Complainants shall electronically, or by other means, provide the Division with their address, telephone number, and email address in connection with the filing of any complaint, and promptly notify the Division of any change in address, telephone number, or email address at all times until the time for an appeal of a final order has expired.

(e) Any complainant may register with the Division electronically by providing their name, email address, and phone number. For any complainant registered with the Division electronically, the Division shall serve all filings electronically.

(f) The Director may file a complaint alleging a violation of the Act if the Director has reason to believe a housing provider may have violated the Act. The Director may also intervene or join as a complainant in any complaint pending before the Division.

(g) Where based on review of a complaint the Division believes the allegations may also constitute a violation of the Law Against Discrimination, the Division shall notify the complainant of the complainant's filing rights under that statute and shall, if the complainant so authorizes, generate a complaint that alleges a violation of the Law Against Discrimination as well.

(h) The Division shall request demographic information, including but not limited to the race and ethnicity of the complainant, in connection with the filing of any complaint. The Division may

use the collected demographic information for purposes of reporting in the aggregate on the demographic information of complainants.

13:5-2.2 Notice to respondents and opportunity to cure or resolve the complaint or answer

(a) Any housing provider may register with the Division electronically and identify an individual to electronically accept service in connection with any complaint filed with the Division by providing the name, email address, and phone number for the individual authorized to accept service. When the Division receives a complaint against a respondent that has not so registered, the Division will attempt to find the information above, including by contacting the respondent, and will ask the respondent to register with the Division electronically. For any respondent registered with the Division electronically, the Division shall serve any complaint and all other filings electronically, and the respondent may respond to the complaint and other inquiries by the Division electronically.

(b) Upon receipt of any complaint, the Division shall immediately serve a copy of the complaint on the respondent electronically. If the Division is unable to effectuate service electronically, the Division shall serve a copy of the complaint on the respondent by certified mail or overnight delivery by commercial courier, or, at the discretion of the Director, by personal delivery by an agent of the Division.

(c) For any complaint filed by an applicant or prospective applicant, at the time of service of the complaint, the Division shall offer the respondent the opportunity to mediate by curing or resolving the alleged violation within 14 days of receiving the notice. Mediation efforts may include, but not be limited to, telephone conversations, meetings, and written correspondence.

(d) The Division shall not subject a respondent to any penalty pursuant to N.J.A.C. 13:5-2.5 if the Division determines that the respondent has cured or resolved the alleged violation within 14 days of receiving the notice, and provided the Division with evidence of same electronically.

(e) If the Division determines that the respondent has indeed cured or resolved the alleged violation, the Division may require the respondent to memorialize the resolution in a written agreement that sets forth the equitable measures that were taken or will be taken to ensure compliance and the remedy, if any, to be provided to the individual who filed the complaint. Any agreement made pursuant to this section, and any complaint in connection therewith, shall not be published on the Division's website.

(f) If the Director finds that there has been a breach of a written agreement made pursuant to this section, the Director may, in their discretion, reopen the complaint for investigation or seek to enforce the agreement.

(g) If the respondent chooses not to cure the alleged violation within 14 days of receiving the notice, and provide the Division with evidence of same electronically, or if the Division determines that respondent's actions have not in fact cured or resolved the alleged violation, respondent shall file an answer to the complaint, a position statement setting forth in narrative form why the respondent believes that no violation of the Act occurred, and a response to any additional request by the Division for documents and/or information within 20 calendar days of service of notice on the respondent that the matter is being transferred for investigation.

Respondent shall file these responsive materials electronically.

(h) Respondents that fail to file an answer, position statement, and/or response to any request for documents and/or information within the time period provided by this chapter are subject to a demand by subpoena, and/or entry of default.

(i) Extensions of time for filing an answer, position statement, and/or responding to any request for document and/or information may be authorized by the Director upon good cause shown.

Requests for extensions of time shall be submitted electronically.

(j) Respondents shall promptly notify the Division of any change in contact information, including mailing address, email address, phone number, and contact person, or other material change in the status of the respondent (such as bankruptcy filing or ceasing to operate as an ongoing concern) at all times until the time for an appeal of a final order has expired.

13:5-2.3 Investigation and findings

(a) Following review of the complaint and responsive documents filed by the respondent, the Director shall determine whether to conduct an investigation of a complaint.

(b) In conducting an investigation, the Division may exercise all investigative powers outlined in N.J.S.A. 10:5-8 and N.J.A.C. 13:4-4.1 et seq.

(c) If, following an investigation, the Division determines that the allegations in the complaint are not substantiated, the Division shall advise the parties of that determination and that such determination is the final agency action on the complaint.

(d) A complainant may appeal to the Appellate Division of the Superior Court a determination pursuant to N.J.A.C. 13:5-2.3(c) that a complaint is not substantiated, but the complainant may not appeal a decision by the Director not to investigate a complaint.

(e) If, following an investigation, the Division determines that the allegations in the complaint are substantiated, it shall issue a notice of violation to respondent. The notice of violation shall notify the respondent of the nature of the violation and the acts or omissions supporting such violation. The notice of violation shall also include the proposed remedies and penalties imposed

as a result of the violation. The respondent shall also be advised of its appeal rights as set forth in N.J.A.C. 13:5-2.4. The complainant shall also be advised of the results of the investigation.

(f) Upon receipt of a notice of violation, the respondent shall within 15 days respond to the Division in writing and either:

1. Acknowledge the violation and agree to the proposed remedies and penalties; or
2. Deny the allegation and request an appeal pursuant to N.J.A.C. 13:5-2.4.

(g) If a respondent fails to respond to a notice of violation in accordance with subsection (f), the Director may issue a final order imposing the remedies and penalties set forth in the notice of violation.

13:5-2.4 Appeals by respondents

(a) When a notice of violation is issued by the Division pursuant to N.J.A.C. 13:5-2.3(e), the respondent shall have the right to file an appeal with the Director. Any appeal of a notice of violation shall be submitted electronically.

(b) An appeal must be received by the Director within 15 calendar days following receipt by the respondent of the notice of violation. The filing of an appeal under this section shall stay the enforcement of any remedies and penalties imposed pursuant to N.J.A.C. 13:5-2.3.

(c) The Director shall decide any appeal filed under (b) above on the written record, or shall provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:5-2.5 Penalties

(a) A housing provider who violates a provision of the Act shall be liable for the following applicable penalties:

(1) an amount not to exceed \$1,000 if the housing provider has not committed any prior violation within the five-year period ending on the date of the filing of the charge;

(2) an amount not to exceed \$5,000 if the housing provider has committed one other violation within the five-year period ending on the date of the filing of the charge; and

(3) an amount not to exceed \$10,000 if the housing provider has committed two or more other violations within the seven-year period ending on the date of the filing of the charge.

(b) A housing provider shall not be liable for penalties under this section in connection with a complaint if it enters into a written agreement pursuant to N.J.A.C. 13:5-2.2 on that complaint and abides by the terms of the agreement.

13:5-2.6 Remedies

(a) For any violation of the Act, the Director may require a housing provider to take one or more of the following actions upon a finding that the housing provider has violated a provision of the Act:

(1) The Director may require a housing provider to cease and desist from continuing to violate the Act; to communicate in writing to the housing provider's employees and agents their obligations under the Act; and to report to the Director on the manner of compliance for a period not to exceed two years provided that the housing provider does not commit future violations of the Act;

(2) The Director may require a housing provider to provide training to its employees and agents on their obligations under the Act;

(3) If a housing provider has committed at least one other violation of this act within the preceding five-year period, the Director may require the housing provider to make a good faith effort to remedy the violation with respect to the applicant when a remedy is possible, by issuing a conditional offer, if the violation has resulted in a failure to issue a conditional offer, or by providing the same or a similar rental dwelling unit to the applicant on the same terms as the prior conditional offer if the same or a similar rental dwelling unit is currently or will become available, if the violation has resulted in the withdrawal of a conditional offer. Notwithstanding any provision of the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.) to the contrary, if a respondent's appeal of a determination by the Director finding a violation is successful, and the court overturns a final decision of the Director that resulted in an order under this paragraph, then a determination that the housing provider did not violate the provisions of the Act as evidenced by such successful appeal shall be grounds for the housing provider to evict the former applicant if that person resides in a rental dwelling unit owned by the housing provider as the result of the Director's order, so long as the housing provider provides the applicant with at least 45 days' notice prior to the eviction;

(4) Unless housing is provided to the applicant pursuant to paragraph (2) of this subsection, the Director may require that the applicant's rental application fee be returned; and

(5) The Director may require that a portion of the sum owed by the housing provider pursuant to N.J.A.C. 13:5-2.5 be paid to the applicant in an amount not to exceed \$1,000.

(b) Nothing herein contained shall bar, exclude or otherwise affect any right, action or remedy which may exist independently of any right or action created by the Act, including but not limited to any right or action under the Law Against Discrimination.

13:5-2.7 Confidentiality of Division's investigatory files

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, rules promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation, or Federal order, and except as otherwise set forth in this subchapter, the Division's investigatory records shall be considered confidential and exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq., other than any final agency disposition concerning an investigation or any notice of violation.